



Staff Report Item 9

TO: East Bay Community Energy Board of Directors

FROM: Inder Khalsa, General Counsel
Bruce Jensen, Alameda County Community Development Agency

SUBJECT: Community Advisory Committee Scope and Conflict of Interest Code

DATE: March 1, 2017

Recommendations

- 1) Review and approve Community Advisory Committee Scope.
- 2) Approve Resolution EBCE R-2017-3 adopting the Community Advisory Committee Conflict of Interest Policy.

Analysis and Discussion

A. Community Advisory Committee Scope

Section 4.9 of the EBCE Joint Powers Agreement provides for the creation of the Community Advisory Committee (CAC) and broadly describes the roles and responsibilities of the CAC, as follows:

4.9 Community Advisory Committee.

The Board shall establish a Community Advisory Committee (CAC) consisting of nine members, none of whom may be voting members of the Board. The function of the CAC shall be to advise the Board of Directors on all subjects related to the operation of the CCA Program as set forth in a work plan adopted by the Board of Directors from time to time, with the exception of personnel and litigation decisions. The CAC is advisory only, and shall not have decision-making authority, or receive any delegation of authority from the Board of Directors. The Board shall publicize the opportunity to serve on the CAC, and shall appoint members of the CAC from those individuals expressing interest in serving, and who represent a diverse cross-section of interests, skill sets and geographic regions. Members of the CAC shall serve staggered four-year terms (the first term of three of the members shall be two years, and four years December 1, 2016 -11- thereafter), which may be renewed. A member of the CAC may be removed by the Board of Directors by majority vote. The Board of Directors shall determine whether the CAC members will receive a stipend and/or be entitled to reimbursement for expenses.

The Chair of the CAC will serve as a non-voting “Ex Officio Board Member” pursuant to Joint Powers Agreement Section 4.2.2.

On January 30, the Board appointed a Selection Committee to interview and propose selected members to the Board. On February 15, the Board approved the application form for the CAC.

In developing the attached draft Scope of duties/activities for the CAC, staff reviewed the Scopes of similar advisory bodies for Peninsula Clean Energy, Sonoma Clean Power, and Valley Clean Energy and developed the attached Scope for the EBCE CAC. The Scope includes the following duties and activities for the CAC:

1. Work on defined objectives as directed by the Board, to produce materials that will assist the Board in decision-making.
2. Review and comment on EBCE budget and rates, policy and programs.
3. Help the Board to identify issues of concern and opportunities to educate community members about the EBCE.
4. Identify potential partners and partnerships, which the Board may wish to pursue in implementing EBCE.
5. Draft reports, in coordination with EBCE staff, to the Board with its findings and recommendations.
6. Serve as an information-channel back to their colleagues and communities.
7. Represent the views of their constituencies in their comments and recommendations.
8. Other duties or tasks, as the Board shall determine in its sole discretion.

Staff is recommending that the Board review the Scope, receive public input, and either approve the Scope or direct staff to make revisions to the Scope.

Additional Issues to Consider:

- **Funding and Support.** Staff is proposing that the Board approve contracts up to \$20,000 to assist in carrying out the CACs duties; total may not exceed \$50,000 per year
- **Chief Executive Officer Reports to Community Advisory Committee.** EBCE staff or the Chief Executive Officer shall provide a report to the Community Advisory Committee on the operations of the Authority during the preceding fiscal quarter. The report shall contain information regarding the financial performance of the Authority during the preceding quarter, the number of accounts served, the amount of power delivered, and a narrative description of energy efficiency, energy conservation, renewable power generation, and other programs carried out by the Authority.

Fiscal Impact:

The EBCEA Board will be asked to consider if a stipend will be provided for CAC members for their participation in the regularly scheduled EBCEA Board meetings. Costs associated with staffing the CAC are unknown.

B. Community Advisory Committee Conflict of Interest Policy

Pursuant to Section 4.9 of the the EBCE Joint Powers Agreement, the Community Advisory Committee is purely an advisory body. Under the Political Reform Act (PRA) and Fair Political Practices Commission (FPPC) Regulations Section 87100, solely advisory bodies which have no final decision-making authority, or a pattern of approval of their recommendations without modification by the Board, are not

“Public Officials” subject to the PRA, and many State conflict of interest rules. As defined in the Joint Powers Agreement, the CAC qualifies as a “purely advisory body at this point in time.

Although the CAC is not subject to the PRA or FPPC Rules, other CCAs with similar advisory bodies have nonetheless adopted Conflict of Interest Policies for those bodies in order to avoid any self-dealing or public perception of conflicts. Additionally, the adoption of a Conflict of Interest Policies would be helpful to the EBCE in the event that the CAC be found to be not solely advisory and its members subject to the PRA at some point in the future. At the same time, the CAC is intended to represent a “diverse cross-section of interests, skill sets and geographic regions,” and participation by a variety of community members should be encouraged.

The recommended CAC Conflict of Interest Policy is based on the conflict code adopted by Valley Clean Energy for their Advisory Committee. The objective of the CAC Conflict of Interest Policy is to encourage the participation of a variety of parties on the CAC, while also providing transparency and requiring members to recuse from decisions directly impacting their financial interests. The requirements are summarized as follows:

- **Disclosures.** CAC members should provide the same disclosure as a public official would use for the Political Reform Act (PRA).
- **Interests subject to disclosure.** Focus on interests related to the electrical energy industry – energy procurement and generation and then additional topics on a case by case basis.
- **Real Property.** Real property disclosures not needed at this time but may in the future if the EBCE engages in decisions about siting energy projects.
- **Disclosure thresholds.** The Conflict of Interest Policy establishes specific thresholds for disclosure of financial interests: (1) more than \$500 of personal income in any year, and (2) for business entities or investments, is worth more than \$5,000 or where the member (or any affiliates, as defined in the Code as close family members or employer) owns more than 5% of the entity.
- **Disclosure process.** Require annual disclosure but also disclosure and recusal on a real time basis (i.e. interests held when the item comes before the committee).
- **Failure to disclose.** Board discretion to determine if non-disclosure warrants removal.

The CAC Conflict of Interest Policy does not require disclosure of small scale residential or commercial renewable energy generation facilities (e.g. roof-top solar PV of 100kW or less in size). If adopted, Community Advisory Committee members will be required to disclose significant financial interests to the EBCE during the interview process and fill out a Form 700 upon appointment.

The CAC Conflict of Interest Policy balances the desire for transparency and disclosure against the Joint Powers Authority mandate to attract a broad spectrum of participants in the CAC. Staff recommends that the Board adopt Resolution R-2017-3, approving the CAC Conflict of Interest Policy.

Fiscal Impact:

Some training and individual advice to CAC members by staff or the CEO, and in some cases, legal counsel, may be required in order to ensure compliance with the the Conflict of Interest Policy. Costs associated with providing training and advice are unknown.

Attachments:

9A – Community Advisory Committee Scope

9B – Resolution EBCE R-2017-3 Adopting the Community Advisory Committee Conflict of Interest Policy

Exhibit CC - Community Advisory Committee Conflict of Interest Policy